LIM KOW & KONG MINERALS SDN. BHD.

v.

PENTADBIR TANAH DAERAH GOMBAK

HIGH COURT MALAYA, SHAH ALAM
MAHADEV SHANKAR J
[ORIGINATING SUMMONS NO. 24-54 OF 1991]
7 MAY 1991

LAND LAW: *Permit to extract rock materials - Whether additional permit is required to transport processed sand - Sand transported by third party - NLC, ss. 15, 72, 426.*

The Gombak land authorities had issued a permit under s. 72 of the National Land Code 1965 (the NLC) to remove rock materials to one TTC in November 1990. The permit authorised the permit holder to extract only sand from Lot 1818 (the said lot) and the permit listed the numbers of 13 vehicles which were authorised to transport the material, including Lorry No. WT 8528 (the said lorry).

The plaintiff processed the raw sand on his factory for subsequent sale to MSG, a glass-making factory. The processed sand was sent in plastic bags to the MSG factory premises by lorry.

On 28 November 1990 the said lorry, while transporting the processed sand was stopped and subsequently detained by the authorities because the lorry driver was unable to produce a permit in accordance with s. 426 of the NLC. Lorry No. WAW 2506 was similarly detained on 29 November 1990. The lorries were respectively owned by one L and H.

The plaintiff, as owner of the goods on Lorry No. 8528 filed these *ex-parte* proceedings to obtain a release of both lorries.

The issue for the Court was whether having lawfully acquired raw sand from third parties, and processed the same at its factory, the plaintiff required another permit to transport the finished products to its customers on hired transport.

Held:

[1] Under s. 72 of the NLC, the permit holder (TTC) is clearly authorised to extract, remove and transport the rock material from the said lot.

[2] Once the material arrived at the plaintiff's factory, the plaintiff acquired a legitimate interest in the material which was processed and packed for transportation to MSG.

[3] As there are many shortcomings in this case, the only order which the Court will make is for the lorries to be released to the owners and the goods be released to the plaintiff.

[Order accordingly.]

Legislation referred to:
Land Rules 1966, (Selangor) r. 22
National Land Code 1965, ss. 15, 72, 418, 426, 426(1), 426A(1)(a), (b)
Rules of the High Court 1980, O. 7

For the plaintiff - Nihad; M/s. Michael Chen & Lee
For the defendant - Sallehuddin

JUDGMENT

Mahadev Shankar J:

On 2 November 1990 the Pemungut Daerah Gombak Mukim Rawang issued a permit to remove rock-material in Form 4C under s. 72 of the National Land Code. The name of the permit holder was Tan Teck Chong. The land which was the subject of the permit is Lot 1818. This lot is three miles towards the North-West of Rawang town and access to it is through Kuala Garing Estate.

No rock-material was to be extracted or removed other than sand.

The numbers of thirteen vehicles on which the material could be transported were set out in the permit. One of the thirteen was Lorry No. WT 8528.

A permit issued under s. 72 of the National Land Code is as the section itself specifies, "to extract remove and transport rock material". The conjunctive "and" means that the permit must allow all three activities. Any two without the third would obviously make the permit ineffective.

The sand thus collected had to be processed before it could be put to commercial use. Quite close to Kampung Kundang about 5 miles due west of Rawang town is a piece of land which is occupied by Shah Alam Properties Sdn. Bhd. (SAPS). The defendant asserts, that this land is State land even though SAPS is said to have a reasonable expectation of being given a title to it. On this land Lim Kow & Kong Minerals Sdn. Bhd. (the plaintiff) is running a factory. Its activity is to process raw sand which has brought it from its suppliers.

Once processed the clean sand is sent out from the factory to Malaysian Sheet Glass Bhd. (MSG), near Sungai Buloh for their glass making operations. The company uses commercial lorries for this transportation.

On 28 November 1990 Encik Adnan bin Arip the ADO Daerah Gombak stopped lorry WT 8528 on the Kundang-Kuang Road. It was loaded with sand packed in plastic bags from the applicant's factory for MSG. It is alleged the lorry driver was unable to produce a permit in accordance with s. 426 of the National Land Code. He therefore had the lorry detained at Kundang Police Station for further investigation.

On 29 November 1990 Encik Kamaruzaman bin Ahmad a Pegawai Penempatan Tanah Daerah Gombak inspected lorry WAW 2506 at Simpang Empat Batu 18. It was also loaded with sand packed in plastic bags. The lorry driver was unable to produce any permit in accordance with s. 426 of the National Land Code.

So this lorry was also detained at Kuang Police Station pending further investigation.

The registered owner of lorry WT 8528 is Lim Kow & Anor. T/A Lim Bros. Construction Co. Lorry WAW 2506 is owned by Hexagon Tower Sdn. Bhd.

At the time these lorries were detained the applicant alleges that neither of the drivers were served with a written notice under s. 15 of the NLC in Form 1A. This section empowers the Land Administrator to call for documents which he wishes to inspect.

The plaintiff referred this matter to their solicitors who were unable to obtain the release of the lorries. These proceedings were therefore filed on 31 January 1991 *ex parte*.

In his affidavit the defendant has pointed out that the reference to s. 456 of the NLC in the heading of the summons is a misnomer as no such section exists in the NLC. Order 7 of the Rules of the High Court 1980 by itself does not provide a remedy. As to lorry WAW 2056 it was averred that the plaintiff did not have any *locus standi* since the lorry belonged to a third party.

In the affidavit-in-support of this application the plaintiff asserted that the lorries were permitted to transport the material found thereon by virtue of the permit issued under s. 72 of the NLC to Tan Teck Chong on 2 November 1990 (the said permit). The defendant denied this because the said permit was issued not to the plaintiff but to Tan Teck Chong. Furthermore only lorry WT 8528 was authorised thereunder to transport the raw material from Lot 1818 at Kuala Garing.

In the present case the defendant asserted that it had evidence that the processed sand on the lorries in question had come from the plaintiff's factory at Kundang. Both the lorry drivers had already been issued with summonses on 18 February 1991 to appear in the Magistrate's Court Rawang. The defendant stated he was prepared to release the lorries pending the disposal of these cases provided a bond of RM25,000 was posted for lorry WT 8528 and RM10,000 for lorry WAW 2506.

In the oral submissions before me the plaintiff's Counsel submitted that the detention of these lorries was an abuse of authority, and in addition to an order for their release also asked for an order for damages.

The defendant who was present in person stated that SAPS were in fact in occupation of the land on which the plaintiff's factory was situated, without lawful authority in the sense that this land was still State land, but the plaintiff's Counsel countered that SAPS was collecting royalty from the plaintiff for all processed sand coming out of the factory.

It is quite evident from the remarks addressed by both parties to the Court that there is a history of overlapping assertions of authority being made by the various powers who are concerned in the activities of the plaintiff.

The undisputed facts here are that the raw material which was processed in the plaintiff's factory originated from the Kuala Garing Lot 1818. But we are not concerned with that activity here. What we are concerned with is whether having lawfully acquired raw sand from third parties, and processed the same at their factory at Kundang the plaintiff requires another permit to transport the finished product to its customers on hired transport.

The defendant's officers acted under s. 426A(1)(a) and (b) in arresting the lorry drivers and seizing the lorries in question because in their view these lorries were involved in the commission of an offence under s. 426(1) of the NLC. This section provides that it is an offence for any person without lawful authority to extract or remove rock material from any land. Before me Encik Sallehuddin for the State Legal Adviser submitted that to transport the processed sand from the plaintiff's factory to their customers another permit is required under s. 72 of the National Land Code in favour of the plaintiff. The alleged offence was committed because the plaintiff did not have such a document. He further submitted that this new permit is required because it is the only way the royalties payable on the processed material can be calculated.

With respect of all concerned it is the view of this Court that the permit issued under s. 72 of the NLC authorises and legitimises the permit holder (in this case Tan Teck Seng) to extract, remove and transport the rock material from Lot 1818.

Under the Selangor Land Rules 1966 r. 22 a royalty of RM4 per cubic yard had to be paid for this permit. (See S1. PU26). It is not suggested that the delivery by Tan Teck Seng of the raw material to the plaintiff's factory was not a lawful activity.

Once the material got there it is evident that the plaintiff acquired a legitimate interest in the material which they processed and packed for transportation to MSG. With the greatest respect to the defendant and to Sallehuddin I am unable to agree that this required yet another permit under s. 72 of the NLC. I say so because the plaintiff was not extracting, removing and transporting rock material from State land, because that had already been done by some one else who had paid for the privilege. For the sake of clarity I would emphasis that there was no question of extraction and removal in the factory.

Consequently it is clear to this Court that the defendant and his officers have acted under a misapprehension.

In the present case there are many short-comings in the manner in which the plaintiff has framed its case. They do not own either of the lorries. Lim Kow & Anor., is not the plaintiff. Neither lorry owner is before me. But the plaintiff owned the goods on the lorries they had hired to transport the processed sand and thereby put the lorry owners in peril. This originating summons was filed well within the three months period provided by s. 418 of the NLC. In the interests of justice I am treating these proceedings as an appeal under that section.

The only order which I need to make in these proceedings is that both the lorries be released forthwith to the owners and the goods thereon be released to the plaintiff because on the uncontested facts the issue of unauthorised detention is the only one I can safely decide.

What is to happen to the Magistrate's Court summonses at Rawang arising out of this case, and whether any action is to be taken for unauthorised occupation of State land by SAPS are matters which have to be dealt with elsewhere.

So also the claim made for damages by the plaintiff's Counsel, which is based on contested facts which are more properly a matter for a civil action in the proper Court. It does seem that the defendant acted in good faith and the extent to which that would go in defence or mitigation is also not a matter for me now.

The plaintiff must be paid the costs of this application by the defendant.

Also found at [1992] 1 CLJ 154